

14 DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION, AND
SUBSTANCE ABUSE SERVICES

118 OFFICE OF SUBSTANCE ABUSE

Chapter 6: REGULATIONS FOR EMPLOYEE ASSISTANCE PROGRAMS FOR
EMPLOYERS OPERATING IN THE STATE OF MAINE

Summary: The purpose of this document is to put in place regulations to assist employers to comply with Public Law 1989 C. 536 which requires any employer wishing to require, requests or suggest that any employee submit to a drug test must first have in place a functioning employee assistance program approved by the Department.

These regulations govern the establishment and operation of employee assistance programs by employers with more than 20 full-time employees and who establish substance abuse testing programs for employees.

I. Definitions

- A. Employee. "Employee" means a person who is permitted, required, or directed by any employer to engage in any employment for consideration of direct gain or profit.
- B. Employer. "Employer" means any person, partnership, corporation, association, or other legal entity, public or private, that employs 20 or more full-time employees.
- C. EAP. "EAP" means an Employee Assistance Program. An EAP is a program to assist employees with problems that may affect their ability to perform their jobs.
- D. EAP Provider. An "EAP provider" is a person or agency who provides evaluation, referrals, treatment, or training services under the EAP.
- E. OADAP. "OADAP" means the Office of Alcoholism and Drug Abuse Prevention.
- F. Substance abuse test. "Substance abuse test" means any test procedure designed to analyze body fluids, tissues, or other materials from the body for the purpose of detecting the presence of substances of abuse.

II. Introduction

Employee assistance programs are designed to assist employees with family, legal, financial, mental health, and alcohol and other drug-related problems that may affect their ability to perform their jobs and their well-being. These worksite-based programs must offer assessment, referral, and training activities. The EAP may also provide services such as prevention, education, and health promotion. The primary goal of an EAP is to maintain an employee's ability to be fully productive by offering a wide range of services, including early intervention and prevention.

Each employer shall design its own employee assistance program based on the company's unique mission and operation. EAP programs may be provided internally or purchased from external service providers, or employers may use some combination of the two. Employers may provide employee assistance programs through participation in consortia. Regardless of the exact structure used to provide EAP services, the design, implementation, and evaluation of the program shall be in accordance with the following regulations.

III. Design

A. Advisory Committee

1. An employer wishing to establish an EAP shall form an Advisory Committee consisting of representatives of the employer and employees.
2. The committee shall make recommendations to the employer for a policy statement and specific strategies and procedures for implementation of the EAP.
3. The advisory committee shall continue to advise the employer on matters relating to the operation of the EAP.

- B. An employer shall consider the types and frequency of performance related problems in planning and developing the EAP.

IV. Components of an EAP

A. The Employee Assistance Plan shall include the following components:

1. A statement of policy which:
 - a. Shall express the desire of employers and employees to achieve a healthy workforce both for the positive impact on productivity and the well-being of the employees.

- b. Shall be based upon the following concepts:
 - (1) A variety of conditions affect job performance, productivity, employee health and quality of life. These conditions may include problems with family, inter-personal relationships, and alcohol and other drugs, as well as legal, financial, physical and mental health problems.
 - (2) If an organization can recognize and address these problems early, work performance will improve.
 - c. Shall ensure the confidentiality of the participants.
- 2. A statement that participation in the EAP:
 - a. Will not adversely affect future employment or career advancement, and
 - b. Will not protect the employee from disciplinary action for substandard job performance or rule infractions that continue following a referrals except as provided by statute.
- 3. A description of services which shall include the following:
 - a. Specific services to be provided, including emergency services;
 - b. The name and location of the providers of the services;
 - c. Provisions for confidentiality;
 - d. Responsibilities of employers, supervisors, and employees to identify and refer employees to the EAP, and to aid in the return to work;
 - e. Policies regarding self referrals, and referrals by employers and employees;
 - f. Provisions for provider training of Employers and employees.
- 4. Implementation procedures which articulate the responsibilities of employers and employees, and the EAP provider, and include the following:

- a. Resources available for space and staff;
- b. Program promotion and employee communications;
- c. Orientation, education, and training;
- d. Recordkeeping and reporting procedures;
- e. Explanation of health/mental health benefit coverage which shall, at a minimum, meet state requirements;
- f. Strategies for program Integration;
- g. quality assurance and liability insurance for the EAP provider;
- h. Identification of community resources; and
- i. Evaluation mechanisms.

V. Operation of the Program

- A. The EAP must encourage the use of client services by providing simple procedures for employees to self-refer, or to be referred by supervisors, labor representatives, and/or peers. An EAP will maintain the following client services:
 - 1. Assessment and referral
 - a. The EAP shall conduct assessments, either at the work site or off-site.
 - b. When appropriate, referrals shall be made to community-based resources for treatment.
 - (1) The EAP provider shall maintain current information regarding community resources.
 - (2) The EAP provider shall make regular evaluations to insure the quality of assessment diagnostics, and treatment resources,

- c. The EAP provider may provide short-term counseling services on-site. Short term shall mean 3 to 5 visits per problem.
 2. The EAP shall provide for client follow-up and reintegration into the workforce.
- B. The EAP will provide consultation and training on a regularly scheduled and ongoing basis to supervisors, management, new employees, and labor representatives of employees. Areas to be covered include but are not limited to:
 1. Impact of mental, emotional, and physical well-being on job performance;
 2. Use of the EAP;
 3. Identification of employees in need of assistance;
 4. Methods for referral;
 5. Management of employees with problems;
 6. Positive return-to-work experience;
 7. Confidentiality; and
 8. Relationship of EAP to personnel actions.
- C. Program management and administration
 1. Written policies and procedures shall be reviewed and updated annually.
 2. Confidentiality
 - a. Client records must be handled according to confidentiality requirements of 42 U.S.C. §§ 290 dd-3 and 290 ee-3 and 42 C.F.R. Part 2.
 - b. Employee Assistance providers must be knowledgeable about these regulations and act to protect the rights of the employees.
 - c. Treatment records may not become part of the employees personnel and/or medical files.

- d. Periodic reports using aggregate data only shall be made to employers and employees, and to the State, for such purposes as evaluating the cost effectiveness and cost benefit of EAP services.
- e. Written EAP confidentiality policies and procedures shall, at a minimum, include the following:
 - (1) Record retention policies,
 - (2) Accessibility of records,
 - (3) Conditions for release of information, and
 - (4) Use of records for reports, research, and evaluation.

3. Staffing

- a. EAP providers shall have sufficient number of qualified personnel available for the efficient and effective operation of the program.
- b. EAPs with no employer-provided EAP staff must assign responsibility for liaison, coordination, and delivery of services to a specific person within the employers' organization.
- c. Each EAP shall ensure that external purchased professional resources meet appropriate educational training, and licensure standards to perform the service.

4. Other considerations

- a. Services shall be provided in appropriate space with easy access and privacy, and with facilities for handicapped persons.
- b. EAPs shall develop an effective community network with local treatment resources, health organizations, and self-help groups.
- c. All EAP providers shall maintain adequate personal and professional liability coverage in their areas of competence and expertise.

- d. EAP providers are expected to adhere to the code of ethics of their respective professional organizations and licensing or certification bodies, as well as Federal, state, and local laws.

VI. Linkages

A. Internal linkages

- 1. Operation of, or responsibility for the EAP shall be placed at an organizational level high enough to ensure the involvement of senior employer and employee leadership to sustain the program.
- 2. Working relationships shall be developed with any internal departments and committees, such as human resources, personnel, safety, and security.

B. External linkages

- 1. The EAP shall negotiate and monitor services and establish accountability for contracting with providers, treatment programs, and health professionals, to ensure that services are being provided in an efficient and effective manner.
- 2. Such monitoring may include site visits and shall include ongoing review of treatment outcomes, costs, and staffing.

VII. Evaluation

- A. An EAP shall evaluate the appropriateness, effectiveness, and efficiency of its operations on a regular basis.
- B. At a minimum, the EAP shall assess provider performance, client performance and satisfaction, community resource performance, and achievement of the goals for which the EAP was developed.
 - 1. The evaluations shall be reported to the State on an annual basis.
 - 2. The evaluations will be used by the State in decisions to renew or withdraw approval for the EAP.

VIII. PROCEDURE FOR APPLICATION

- A. Prior to operation of an EAP, any employer wishing to receive approval shall submit an application for approval on forms provided by the

Department of Human Services, together with a copy of the plan, policies and procedures.

- B. The applicant must have clear written statements of policy and procedure which shall address each of the provisions of the Regulations for EAP's for Employees Operating in the State of Maine. In addition, any EAP in operation prior to December 31, 1989, or any employer seeking renewal of current approval.. shall provide data as required in Section VII B Evaluations, of said Regulations in support of their application.
- C. Within 30 days of submission, the Department shall either approve the EAP, or disapprove the EAP, or approve with conditions. The conditions shall contain a time period within which the plan shall be brought into full compliance.
- D. Initial approval of the EAP may be for a two-year period. The Department shall conduct biennial monitoring of the plan utilizing data provided through the evaluation and other evidence of compliance with the regulations. Following such monitoring, the Department may either renew approval, require proof of changes to meet regulations, or withdraw approval if the plan is in significant non-compliance.
- E. Any employer aggrieved by any decision of the Department of Human Services regarding approval shall have the rights of appeal specified in the Maine Administrative Procedures Act, Title 5, C. 375.
- F. The Department shall inform the Department of Labor of any changes in these rules to ensure necessary coordination between the rules of both Departments. In addition, the Department shall notify the Department of Labor of any employer for whom certification has been granted or denied.

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